

**ARIZONA BOARD OF APPRAISAL**  
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**MINUTES**  
**REGULAR BOARD MEETING**  
**THURSDAY, APRIL 16, 2009, 9:00 AM.**

Board Members Present at Roll Call: Gabe Corral, Victor Hartsfield, Cynthia Henry, Myra Jefferson, Michael Marquess, Debbie Rudd. A quorum was present. Board Members Absent: Les Abrams. Vacant Board Member Positions: Certified General Appraiser; Public.

Also Present at Roll Call: Debb Pearson, Executive Director; Rebecca Loar, Regulatory Compliance Administrator; Jeanne Galvin, Assistant Attorney General. Also Present after Roll Call: Christopher Munns, Assistant Attorney General, Solicitor General's Office.

Debbie Rudd acted as Chairperson.

The Board pledged allegiance to the flag of the United States of America.

**APPROVAL OF MINUTES**

Michael Marquess moved that the Minutes of the March 11, 2009, Telephonic Regular Board Meeting be approved. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. The Minutes of the February 27, 2009 and March 27, 2009 Phoenix Board Outreach Meetings were not approved due to the lack of a quorum of those Board members present at the meetings. Staff was instructed to place the drafts of the minutes on the Board's website.

**PUBLIC ANNOUNCEMENTS AND CALL TO PUBLIC**

David Tracy, complainant in 2797/2798/2799, filed a Call to Public and spoke to the Board concerning the complaints. Chad Fisher, Nations Choice Mortgage, complainant in 2727, filed a Call to Public and spoke to the Board concerning the complaints.

**COMPLAINT REVIEW**

Review and Action Concerning 2728, Michael E. McCune.

Respondent appeared. Michael Marquess moved that the investigative report be returned to the investigator for clarification. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2779, Robert C. Oglesby/2780 Mark A. D'Hondt.

Respondent appeared. Staff summaries were read. Michael Marquess moved that the files be referred to investigation. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2787, Gregory M. Sir.

Respondent appeared and was represented by M. Brennan Ray, Esq. Staff summary was read. Michael Marquess moved that the Board find no violations, dismiss the complaint, and the matter be referred to the Arizona Department of Financial Institutions. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2764, Raymond L. Ferrier.

Respondent did not appear but was represented by Chad R. Kaffer, Esq. Staff summary was read. Gabe Corral moved that, at the request of Respondent's counsel, the matter be continued. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2793, Edward J. Stanton.

Respondent appeared. Michael Marquess moved that the matter be referred to investigation. Staff summary was read. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

**APPLICATION REVIEW COMMITTEE REPORT**

Debbie Rudd reported the following Arizona appraiser and property tax agent information as of April 16, 2009:

	<u>4/07</u>		<u>4/08</u>		<u>4/09</u>
Licensed Residential	1137		1017		808
Certified Residential	999		1177		1233
Certified General	789		809		824
Nonresident Temporary	36	Total 2961	36	Total 3039	40 Total 2905
Property Tax Agents	283		272		302

Debbie Rudd moved that the Board accept the Committee's recommendations (see attached). Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

**COMPLAINT REVIEW**

Review and Action Concerning 2660, Timothy H. Shaw.

Respondent appeared and was represented by Bradley R. Jardine, Esq. Michael Marquess moved that the Board find Level II violations and offer Respondent a due diligence consent letter citing violations and providing for disciplinary education. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board reject Respondent's counteroffer and withdraw the original Consent Agreement and Order. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2788, Lisa L. Romero.

Respondent appeared. Staff summary was read. Michael Marquess moved that the matter be referred to investigation. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2735, Calista J. Fiedler.

Respondent appeared. Michael Marquess moved that the Board accept the investigative report. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board invite Respondent to an informal hearing. Victor Hartsfield seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2795, Chad L. Fuller.

Respondent and complainant appeared. Staff summary was read. Michael Marquess moved that the matter be referred to investigation. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2785, Carolyn A. Fox.

Respondent appeared. Staff summary was read. Michael Marquess moved that the Board find no violations and dismiss the complaint. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2716, David M. Lyons/2717, William A. Barnes.

Respondents appeared. Michael Marquess moved that the Board accept the investigative report. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board find no violations and dismiss the complaints. Debbie Rudd seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2797/2798, Jan A. Sell/2799, Michael S. Miller.

Respondents and complainant appeared. Staff summaries were read. Michael Marquess moved that the Board go into Executive Session for legal advice. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Upon return from Executive Session, Michael Marquess moved that the Board find no additional facts were presented than found in the prior complaints filed by complainant, that the Board find no violations and dismiss the complaints. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2431, Gerald A. Diehl.

Respondent appeared. Michael Marquess moved that the Board terminate the mentorship and probation under the 1/18/08 Consent Agreement and Order of Discipline. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2786, Christopher Chase.

Respondent appeared. Staff summary was read. Debbie Rudd moved that the matter be referred to investigation. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2789, John G. Heisser.

Respondent appeared. Staff summary was read. Debbie Rudd moved that the Board find no violations and dismiss the complaint. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2280/2281/2282/2283/2284/2285/2286/2287/2288/2289/2290/2291/2292/2293/2294/2295/ 2296/2297/2298/2299/2300/2301, Kym R. Gaudette.

Respondent did not appear. Michael Marquess moved that the Board terminate the mentorship under the 2/21/08 Consent Agreement and Order Providing for Suspension, Probation and Education. Gabe Corral seconded the motion. The Board voted 5-1 in favor of the motion. Cynthia Henry voted no. Michael Marquess moved that the Board reject Respondent's request to terminate the probation under the 2/21/08 Consent Agreement and Order Providing for Suspension, Probation and Education. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Informal Hearing Concerning 2721, Joseph A. Turley/2722, Douglas C. Underwood.

Respondents appeared, were sworn in, made statements to the Board and answered the Board's questions. Debbie Rudd moved that the Board find Level II violations and offer Respondent in 2721 a due diligence consent letter citing the violations and providing for disciplinary education. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Debbie Rudd moved that the Board find Level II violations and offer Respondent in 2722 a due diligence consent letter citing the violations and providing for disciplinary education. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2565/2630/2631, Paul R. Fortier.

Respondent did not appear. Michael Marquess moved that the Board accept the investigative reports regarding 2565 and 2631. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board return the investigative report concerning 2631 to the investigator for clarification. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board invite Respondent to an informal hearing. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. The Board noted that 2565 was under 12-month file review.

Review and Action Concerning 2693/2694/2695/2696/2697/2698/2699/2700/2701/2702/2703/2704/2705/2606/2707, Douglas B. Clithero.

Respondent did not appear. Michael Marquess moved that the Board accept the investigative reports. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Debbie Rudd moved that the Board invite Respondent to an informal hearing. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2708, Robert H. Baker/2709, Patricia A. Cook.

Respondents did not appear. Michael Marquess moved that the Board accept the investigative report. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board invite Respondents to an informal hearing. Myra Jefferson seconded the motion. The motion was withdrawn. Debbie Rudd moved that the Board find Level II Violations and offer each Respondent a due diligence consent letter citing the violations and providing for disciplinary education. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2713, Darrell R. Martin.

Respondent did not appear. Gabe Corral moved that the Board accept the investigative report. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that the Board invite Respondent to an informal hearing. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Informal Hearing Concerning 2727, King G. Ruby.

Respondent appeared, was sworn in, made statements to the Board and answered the Board's questions. Debbie Rudd moved that the Board find Level III violations and offer Respondent a Consent Agreement and Order citing the violations and providing for probation, mentorship and education. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Informal Hearing Concerning 2715, William M. Nold.

Respondent appeared, was sworn in, made statements to the Board and answered the Board's questions. Gabe Corral moved that the Board find Level II violations and offer Respondent a due diligence consent letter citing violations and providing for disciplinary education. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Christopher Munns, Assistant Attorney General, Solicitor General's Office, joined the meeting.

Formal Hearing Concerning 2497, Michael D. Schendel.

Respondent appeared and was sworn in. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. The Board heard oral testimony on behalf of the parties. State's Exhibits 1-8 were admitted into evidence. Gabe Corral moved that the Board adopt Findings of Fact 1-4 to read as follows:

**FINDINGS OF FACT**

1. On May 13, 2008, in resolution of the above-captioned matter, Respondent voluntarily entered into a Consent Agreement and Order with the Board. Among other conditions, Respondent was required to successfully complete the following education within six (6) months of the effective date of the Agreement: Seven (7) hours of sales comparison approach, seven (7) hours of USPAP update and six (6) hours of mortgage fraud. To date, Respondent has failed to complete the seven (7) hours of sales comparison approach and the seven (7) hours USPAP as required.

2. In addition, pursuant to the Consent Agreement and Order: "Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by property address, appraisal type, valuation dates, the Mentor's review date, the date the appraisal was issued and the number of hours worked on each assignment. The report log shall be filed monthly beginning the 15<sup>th</sup> day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. If the log reporting dates falls on a Saturday, Sunday, or holiday, the report log is due on the next business day. Even if Respondent performs no appraisals within a given month, he must file an appraisal log with the board showing that no appraisals were performed. The monthly log report may be filed by mail or facsimile." To date, Respondent has not filed the required monthly appraisal logs.

3. Paragraph 22 of the May 13, 2008 Consent Agreement and Order provides, in part, that "Respondent" agrees that any violation of this Consent Agreement is a violation of A.R.S. §32-3631(A)(8), which is willfully disregarding or violating any of the provisions of the Board's Statutes or the rules of the Board for the administration and enforcement of its statutes.

4. Respondent, without good cause, has failed to comply with the terms of the Consent Agreement and Order by failing to complete the education as required and by failing to submit the required monthly appraisal logs.

Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board adopt Conclusions of Law 5-6 to read as follows:

**CONCLUSIONS OF LAW**

5. Noncompliance with the Consent Agreement is a violation of a Board order and a violation of A.R.S. § 32-3631(A)(8), which is a willful disregard of the statutes and rules governing the licensing and certification of appraisers in the State of Arizona.

6. Pursuant to the authority of the Board found at A.R.S. § 32-3601 *et seq.*, the conduct and circumstances described herein constitute grounds for discipline. The Board considers the above referenced violation a Level V violation subject to revocation pursuant to the Board's Substantive Policy Statement No. 1.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board adopt an Order of Revocation to read as follows:

**ORDER OF REVOCATION**

In issuing this order of discipline, the Board considers its obligations to fairly and consistently administer discipline, its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

1. That licensed residential appraiser license No. 10739 issued to Respondent to practice as a Licensed Real Estate Appraiser be revoked as of the effective date of this Order.
2. That Respondent shall immediately surrender his license by returning it to the Board office.
3. That Respondent may not accept fees for or perform appraisals, appraisal reviews, consulting assignments, or any services governed by the Uniform Standards of Professional Appraisal Practice, A.R.S. § 32-3601, *et seq.*, or the rules promulgated thereunder.
4. That Respondent is hereafter subject to the provisions of A.R.S. § 32-3638, which states that any person who is not licensed or certified as an appraiser and performs a real estate appraisal or appraisal review, or uses the designation of licensed or certified appraiser and/or provides false information to the Board is guilty of a Class 1 misdemeanor.
5. That if Respondent reapplies for licensing or certification as an appraiser in the State of Arizona in the future, this disciplinary action may be considered as part of the substantive review of any application submitted by Respondent, pursuant to A.R.S. § 32-3611(D).
6. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations set forth herein to amount to Level V Violations for disciplinary purposes.

**RIGHT TO PETITION FOR REHEARING OR REVIEW**

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective 35 days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion upon the following roll call vote: Gabe Corral—yes; Victor Hartsfield—yes; Cynthia Henry—yes; Myra Jefferson—yes; Michael Marquess—yes; Debbie Rudd—yes.

**Review and Action Regarding Formal Hearing Concerning 2803, Randall P. Jacobs.**

Respondent did not appear. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. The Board heard oral argument on behalf of the State regarding the State's Motion to Rescind Formal Hearing. Michael Marquess moved that the Board rescind its

referral to formal hearing. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the complaint be closed to be reopened and considered in the event Respondent reapplies. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2477 (08F-2477-BOA), Robert L. VanDyke.

Respondent did not appear. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. The Board, having reviewed the record, heard oral argument on behalf of the State. Gabe Corral moved that the Board adopt Findings of Fact 1-36 of the Administrative Law Judge, to read as follows:

**FINDINGS OF FACT**

**BACKGROUND AND PROCEDURE**

1. The Arizona State Board of Appraisal ("the Board") issued Residential Real Estate Appraiser License No. 10801 to Respondent Robert L. Van Dyke on July 15, 2002. Mr. Van Dyke's license is set to expire on July 31, 2010.
2. On August 20, 2007, the Board received an anonymous complaint regarding a summary appraisal report that Mr. Van Dyke had performed of a property located at 2771 E. Wisteria Drive, Chandler, Arizona ("the Wisteria Drive property"), which report had an effective date of February 9, 2007. Mr. Van Dyke responded in writing to the complaint, denying any wrongdoing.
3. The Board appointed contract investigator Jay B. Clark, a certified residential appraiser, to investigate the complaint. Mr. Clark rendered a report of his investigation, which opined that Mr. Van Dyke had violated certain Standard Rules ("SRs") of the July 1, 2006 edition of the Uniform Standards of Professional Appraisal Practice ("USPAP").
4. Based on Mr. Clark's report, on January 16, 2009, the Board issued a Complaint and Notice of Public Hearing. The Complaint charged Mr. Van Dyke with violations of USPAP SR 1-1(b) and (c), SR 2-2(a), (b), and (c), Standards Ethic Rule – Conduct and Standards Ethics Rule – Competency in his preparation of the February 9, 2007 summary appraisal report on the Wisteria Drive property, which furnished cause to discipline his license under A.R.S. § 32-3631 *et seq.* and A.A.C. R4-46-101 *et seq.*
5. The Board also noticed a hearing pursuant to A.R.S. § 41-1092 *et seq.* before the Office of Administrative Hearings, an independent state agency, for February 23, 2009 at 9:00 a.m.
6. A hearing was held on February 23, 2009, at which Deborah G. Pearson, the Board's Executive Director, Mr. Clark, and Mr. Van Dyke testified. The Board had admitted into evidence 10 exhibits and Mr. Van Dyke had admitted into evidence one exhibit.

**ADDITIONAL HEARING EVIDENCE**

**Ms. Pearson**

7. The Board oversees approximately 2,700 licensed or certified residential and general appraisers, consisting of the following three classifications: (1) State licensed real estate appraisers, who can perform an appraisal or an appraisal review of noncomplex one-to-four unit residential real properties having a value of less than \$1 million or complex one-to-four unit residential properties having a value of less than \$250,000; (2) State certified residential



real estate appraisers, who can perform an appraisal or appraisal review of one-to-four unit residential properties, without regard to complexity or value; and (3) State certified general real estate appraisers, who can perform appraisals and appraisal reviews of all types of real property.

8. On July 21, 2005, the Board had adopted Substantive Policy Statement #1, which under A.A.C. R4-46-301 set forth five levels of violations based on escalating levels seriousness and severity of penalty, ranging from nondisciplinary letters of concern to license revocation.
9. The Board classified Mr. Van Dyke's violations in his appraisal of the Wisteria Drive property as Level III, which were "[v]iolations found with substantial errors that in the aggregate may affect the credibility of the assignment. Minor violations of ethics and/or competency may be found. Violations found rise to the level of affecting the credibility of the assignment." The penalty for a Level III violation was a Consent Agreement or an "Order of Probation with Education, Mentorship and/or Practice Restrictions."
10. Mr. Van Dyke had one prior Level II complaint, which had resulted in a nondisciplinary letter of remedial action on January 17, 2006 and required Mr. Van Dyke to complete a 7-hour course in appraising new residential construction within 90 days from the date of the letter. Mr. Van Dyke had complied with the Board's requirements.
11. Ms. Pearson testified that, as a result of the Level III violation at issue, the Board hoped to protect the public and improve the quality of Mr. Van Dyke's appraisal practice by placing his license on probation for 12 months with the following terms: (1) Mr. Van Dyke would be required to complete a minimum of 24 appraisal reports under the supervision of a Board-approved mentor; (2) The mentor would be required to co-sign any report that Mr. Van Dyke completed during the probationary term unless the client objected, in which case the mentor would be required to perform an appraisal review; (3) Mr. Van Dyke would be required to submit to the Board a monthly log of all the appraisals he prepared; (4) The mentor would be required to submit to the Board a monthly report of Mr. Van Dyke's improvements and persistent problems and the number of appraisal reports prepared; (5) Mr. Van Dyke would be required to take 15 hours in report writing and 15 hours in basic appraisal practice in Board-approved courses, in addition to the continuing education that the Board requires for continuing licensure.

**Mr. Clark**

12. Mr. Clark has been a certified residential appraiser for 23 years. He has been self-employed by his own small appraisal business since 1992. He has been one the Board's contract investigators for four years.
13. When Mr. Clark receives a complaint from the Board to investigate, he ensures he has no conflict-of-interest based on any interest in the subject property or past relationship to the appraiser. After he accepts the assignment, he reads the initial complaint, the appraiser's response, the appraisal report, and the appraiser's workfile, and researches the Multiple Listing Service ("MLS"), public records, and county tax assessor's information and conducts interviews of realtors who have first-hand information about the subject property, comparable sales, or the subject's neighborhood.
14. Mr. Clark testified that the appraiser's workfile should contain all the research data on which the appraiser had relied in his report for the subject property and comparable sales.

15. In this case, a field review appraisal had been performed of Mr. Van Dyke's appraisal report of the Wisteria Drive property. Mr. Clark testified that, in some cases, review appraisals were routinely performed for quality control. But, in most cases, review appraisals were performed based on "red flags" in the appraisal report, such as the use of dissimilar or dated comparable sales. Mr. Clark assumed the review appraisal came to the Board with the initial anonymous complaint.
16. The review appraisal of the Wisteria Drive property included comparable sales that were not included in Mr. Van Dyke's appraisal report. Mr. Van Dyke's opinion of value of the Wisteria Drive property was \$610,000. The appraisal review's opinion of value was \$520,000.
17. Mr. Clark described Mr. Van Dyke's errors in the development of his appraisal report of the Wisteria Drive property, which could have affected value, in violation of SR 1-1(b) and (c),<sup>1</sup> as follows:
  - 17.1 The zoning in the report was shown as R-4, Single Family. In fact, the zoning of the property was PAD ("Planned Area Development"), Single Family. In all of metropolitan Phoenix, R-4 is a multifamily zoning classification. The zoning of a property is readily available to an appraiser.
  - 17.2 Mr. Van Dyke's report stated that "[t]here are 15+/- comparable properties for sale in the subject neighborhood ranging in price from \$400,000 to \$700,000" and that "[t]here are 30 +/- comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$400,000 to \$800,000."
  - 17.3 Mr. Clark testified that, in a retrospective review, it is not possible to know what was listed. But he was able to find four resales of similar homes in the neighborhood that were selling for between \$449,000 and \$491,975, none of which were used in the report.<sup>2</sup>
  - 17.4 There was no highest and best use in Mr. Van Dyke's report. In most cases, a property's highest and best use would be the existing use but in some cases, for example, a residence on a corner that could be used as commercial, it would not. USPAP requires a statement of highest and best use.
  - 17.5 There is natural gas in the neighborhood and, according to the MLS and Mr. Clark's interview with the realtor, the Wisteria Drive property was sold with gas heat. Mr. Van Dyke's report stated that the forced-air heating used "ELEC" fuel.
  - 17.6 Mr. Van Dyke's appraisal report of the Wisteria Drive property was not complete because it did not include a letter of transmittal, photographs of the subject and comparable sales, which are essential, and an appraisal certification of the purpose of the report. USPAP required the report to be complete and self-contained.
  - 17.7 Mr. Van Dyke's report stated incorrectly that the asking price of the subject in MLS was \$534,965, when in fact it was listed for \$523,685 and shown as sold in MLS for \$500,000.

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<sup>1</sup> SR 1-1 provides that, in developing a real property appraisal, an appraiser must:

- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

<sup>2</sup> These available comparable sales are described at Finding of Fact No. 21, *infra*.

Mr. Clark pointed out that Mr. Van Dyke had reported that the subject sold for \$534,965 on 12/08/06. Mr. Clark assumed that the builder had included upgrades. The report contained no discussion of the reason for the higher actual selling price or what sort of incentives had been included.

18. Mr. Clark testified that Mr. Van Dyke had violated SR 2-1(a) and (b)<sup>3</sup> in reporting his opinion of value in the following respects:
  - 18.1 Mr. Van Dyke reported that the Wisteria Drive property had 3,829 square feet. But it was assessed at 3,383 square feet and marketed in MLS at 3,148 square feet. Mr. Van Dyke's report did not address the discrepancy. Based on Mr. Clark's interviews with realtors who marketed homes in the subdivision containing the subject, he opined that either Mr. Van Dyke's measurements were incorrect or he had measured the wrong home.<sup>4</sup>
  - 18.2 The report's narrative section consisted of "standard comments," which "tend to be used for many different reports and are general in nature." The use of these standard comments led to inconsistencies. For example, the Neighborhood section of the form stated that "[p]roperty values have continued to increase in the past years" and that "[t]he trend appears to be continuing." But the Neighborhood box portion of the reported showed "stable" values. Mr. Clark testified that, with the builder still in control of the new home sales, offering "generous incentives" per the MLS, market values were probably not increasing at that time. In addition, the Market Comments section stated that exposure times were between 15 and 90 days, but the box section showed 3-6 months.
19. Mr. Clark's report also addressed Mr. Van Dyke's response to the complaint, as follows:
  - 19.1 The complaint stated that Mr. Van Dyke had inflated the subject value by \$90,000. Mr. Van Dyke responded that "[a]ppraising is not [an] exact science it is subjective." Mr. Clark opined that "[t]he choice of comparables does appear to have been only those sales that supported a value closer to the lender's estimate of value rather than the most similar and proximate sales."
  - 19.2 The complaint charged that the distance to comparable sale #3 was inaccurate. The report stated that Comp #3 was 1.5 miles to the west of the subject. The review appraiser stated that it was 3.25 miles to the west. Mr. Van Dyke responded that sale #3 was in actuality 2.7 miles to the west, that his error had resulted from the lack of updated mapping programs, and that he had used "+/-" to indicate that the distance could be more or less. Mr. Clark opined that "[a] +/- is not adequate to explain an error of over 55%." Comparable sale #3 in fact was 3.37 miles to the west. Although using the Maricopa County Assessor's GIS maps to place

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<sup>3</sup> SR Rule 2-1 provides that each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly; and
- (c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

<sup>4</sup> Mr. Clark testified that the Wisteria Drive property was a multi-level structure with somewhat complex architecture. On the second level, the structure had a game room at a right angle to the upstairs bedrooms. At the right angle was a circular alcove. An appraiser would have had to measure the radius of the circular alcove to for the computer program to calculate square footage correctly.

- comparable sales in relation to the subject where no mapping programs were available was "tedious and time consuming . . . [ , such significant error in proximity] does speak to the competency and diligence of the person preparing the report."
- 19.3 The complaint stated that Mr. Van Dyke had ignored relevant comparable sales. Mr. Van Dyke responded that "appraising is subjective" and that he "felt that the comparable sales used were most relevant." Mr. Clark opined that "[t]he word 'subjective' . . . appears to override the need for the appraiser to be objective. There were numerous, more architecturally similar sales, both of similar size to the measured and to the assessed livable, in the immediate neighborhood, that were not used [or] addressed."
- 19.4 Mr. Clark also pointed out that Mr. Van Dyke's response to the initial anonymous complaint stated that, "[a]fter this report was submitted to the lender it was made clear to the appraiser that it would not be used. The value the homeowner expected would be there was not due to a stabilization of market conditions." Mr. Clark opined that "it appears that the appraiser . . . was aware of the homeowner's expectation of value and was not able to meet that value. The appraiser should not even know the value 'expected', let alone attempt to appraise to it, and this appears to be a violation of the Ethics Provision . . . ."
20. Mr. Clark addressed the comparable sales that Mr. Van Dyke used, as follows:
- 20.1 Comparable sales #1 and #2 were on Wisteria Drive. But Mr. Clark testified that this is not enough to show proximity; streets may run for miles. According to the realtor whom Mr. Clark interviewed, these sales were build-to-suit homes that were one-story, unlike the two-story subject. The market prefers one-story homes.
- 20.2 In addition, the transfer of comparable sales #1 and #2 took place between the builder and buyer, likely based on an earlier contract, without MLS participation, even though Mr. Van Dyke cited MLS as a source. Mr. Van Dyke did not disclose how the room counts or bath counts were determined. Mr. Clark testified that this information would not have been readily available if the properties had not been listed on MLS.
- 20.3 Photographs of comparable sales #1 and #2 showed single-level homes that Mr. Clark estimated to be approximately 2400 square feet. The purchase of comparable sales #1 and #2 took place prior to the previous purchase of the subject for, respectively, \$50,000 and \$27,000 more than the subject. Comparable sales #1 and #2 were brand new, unlike the subject when Mr. Van Dyke appraised it.
- 20.4 Comparable sale #3 was more than 3 miles away from the subject and was also a new home from the builder, not a year old like the subject. The MLS indicated \$65,000 in upgrades, which likely were superior to the subject's amenities. Although the report stated that no closer sales were available, Mr. Clark identified four closer, more similar sales.<sup>5</sup>
- 20.5 Comparable sale #4 was the only true resale of the four sales used. The MLS indicated that comparable sale #4 was much more highly upgraded than the subject. Mr. Van Dyke had not made appropriate adjustments for comparable sale #4's superior amenities.
- 20.6 Comparable sale #5 was listed in the MLS for \$599,900. Mr. Van Dyke's report showed a deduction of \$19,770 for the asking price. He made no adjustment for a livable area that was 133 square feet larger than the subject, even according to Mr. Van Dyke's calculations, which

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<sup>5</sup> The available comparable sales are described at Finding of Fact No. 21, *infra*.

- exceeded the assessed and listed livable area. According to Mr. Clark, comparable sale #5 “did finally sell for \$548,000 in June of 2007 after 213 days on the market.”
21. Mr. Clark also identified four sales that Mr. Van Dyke had not used that were more comparable to the subject than the comparable sales that Mr. Van Dyke had used, as follows:
- 21.1 3004 S. Bell Place closed for \$491,475 on January 8, 2007. This property was a new home but had MLS participation. It was shown as a two-story, 3904 square foot home with 5 bedrooms and 4 baths. It had been listed for \$571,875 for 241 days. It had both greenbelt and traffic noise influences.
- 21.2 3373 S. Kimberlee Court closed on September 26, 2006 for \$449,000. It was a true resale of a two-story home shown as 3254 square feet, five bedrooms, 3.5 baths, and a 3-car garage. This sale was architecturally similar to the subject and was more similar in terms of the assessed livable square footage. It had never been lived in.
- 21.3 3351 S. Roger Court closed on December 1, 2006 for \$450,000. It was also a resale 3667-square-foot, two-story home with 5 bedrooms, 3.5 baths, and a 4-car garage. It has the greatest visual similarity to the subject because it was the same base model, the Legacy.
- 21.4 2845 E. Honeysuckle Place closed on October 31, 2006 for \$450,000. It was a true resale assessed at 3754 square feet, 5 bedrooms, 4 baths, and a 4-car garage.
- 21.5 Mr. Clark testified that all of these sales indicated high levels of upgrading and amenities, like the subject. His report noted that the four comparable sales that Mr. Van Dyke did not use “demonstrate a measurable, downward time factor that is not indicated in the report.”
22. The Ethics Rule – Conduct provides that “[a]n appraiser must not accept an assignment that includes the reporting of a predetermined opinion or conclusions.” Based on Mr. Van Dyke’s choice of comparable sales and failure to include more comparable sales that would have indicated a lesser value, Mr. Clark believes that Mr. Van Dyke violated this provision and that there was “a direction in assignment results that favors the client.”
23. The Ethics Rule – Conduct also provides that “[a]n appraiser must not communicate assignment results in a misleading or fraudulent manner.” Mr. Clark testified that Mr. Van Dyke also violated this rule by apparently overstating the subject’s livable square footage, choosing as comparables old-contract builder sales and out-of-subdivision sales, failing to discuss different architecture, and almost completely failing to include any narrative discussion regarding most of these factors. These errors “would tend to indicate the assignment result may have been influenced by the client or borrower’s value estimate.”
24. The Ethics Rule – Competency Rule provides that “[a]n appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal.” Mr. Clark opined that this rule was violated by Mr. Van Dyke’s “minimal notes from the inspection and the disparities between the hand drawn sketch with missing dimensions, as well as missing dimensions on the machine generated sketch addendum, which has a different appearance than the hand-drawn.” Mr. Clark also opined that Mr. Van Dyke’s errors relating to zoning, neighborhood influences, increasing versus stable or more likely declining values, inconsistent and inaccurate marketing times, and the natural gas supply violated this rule.
- Mr. Van Dyke**
25. Mr. Van Dyke testified that, although he had collected data for his appraisal report of the Wisteria Drive property, he had not finalized the report. His last communication regarding the

report was on February 13, 2007, when the owner of The Appraisal House, his employer at the time, who was also his brother-in-law, informed him that, based on the preliminary opinion of value, the lender had canceled the appraisal request. All he had been paid to do was field work.

26. Mr. Van Dyke testified that, when he found out about the initial anonymous complaint in August 2007, he was no longer working for The Appraisal House. He had left its employment in May 2007 "under duress."
27. Mr. Van Dyke testified that he called the lender and was told that it had canceled the appraisal request and informed the client that it was unable to provide a loan. Mr. Van Dyke then contacted his brother-in-law at The Appraisal House and requested the original copy of his preliminary appraisal report. He had received everything except the manila folder, which would have shown the date of inspection, when the appraisal had been canceled, and by whom.
28. Mr. Van Dyke testified that it was his digital signature on the appraisal report of the Wisteria Drive property, which he had never authorized to be used. Mr. Van Dyke testified that he was "flabbergasted" that his report on the Wisteria Drive property had gone out with his digital signature, without his authorization.
29. Mr. Van Dyke admitted that it was a violation of applicable standards to have digital signatures that were not password-protected. Because The Appraisal House had refused to protect its employees' digital signatures, Mr. Van Dyke testified he had left its employment.
30. Mr. Van Dyke had admitted into evidence the cover page from his appraisal report of the Wisteria Drive property, which showed that it had been prepared for Shad Peterson at Mesa Mortgage, and photographs of the subject and comparable sales. The Board conceded that these documents completed the appraisal report. Mr. Van Dyke also pointed out in his hand-drawn sketch of the layout of the subject property included the radius of the circular alcove.
31. Mr. Van Dyke claimed that he had gotten information on comparable sales #1 and #2 from the realtor. But he admitted that this information is not attributed to the realtor in the report.
32. Mr. Van Dyke also admitted that there was nothing that had been provided to the Board that would indicate that the appraisal report of the Wisteria Drive property had been canceled or that the report had been sent out without his authorization.
33. The only part of his response to the initial anonymous complaint that Mr. Van Dyke testified adverted to these circumstances was the paragraph quoted *supra* at Finding of Fact No. 19.4, which Mr. Clark opined had evidenced Mr. Van Dyke's attempt to appraise the property at an expected value. Mr. Van Dyke admitted that his response to the complaint also included the following:
34. As the licensed appraiser hired to perform the work on this file, I accept responsibility for the quality of this report. Mr. Van Dyke testified that the lender was in the office next door to The Mortgage House. He was "not exactly aware" of the value that the lender required because "other people were doing the market analysis." His appraised value of the Wisteria Drive property was "in the ballpark."
35. Mr. Van Dyke testified that, when he prepared the response, he was under pressure from his wife and brother-in-law not to implicate his brother-in-law. Although he wanted to be more forthcoming with the Board, he was "convinced otherwise" by "people he loves and trusts."

36. Mr. Van Dyke testified that he requested a hearing on the Board's proposed discipline because it is a "tough market" in which it is "hard to keep clients." Mr. Van Dyke appreciates the value of education and of a mentor because the only person he has ever worked with is his brother-in-law. Mr. Van Dyke testified that he no longer uses boilerplate language in his reports and requested that the probation be for a period of less than 12 months.

Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board adopt Conclusions of Law 1-9 of the Administrative Law Judge, to read as follows:

**CONCLUSIONS OF LAW**

1. This matter lies within the Board's jurisdiction.<sup>6</sup>
2. The Board bears the burden of proof and must establish cause to penalize Mr. Van Dyke's license by a preponderance of the evidence.<sup>7</sup>
3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."<sup>8</sup> A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."<sup>9</sup>
4. The Arizona legislature created the Board to prescribe and enforce standards of professional appraisal practice.<sup>10</sup> The Arizona legislature charged the Board with investigating complaints against licensed appraisers and, if violations of applicable statute, regulation, or standard are established, disciplining appraisers' licenses.<sup>11</sup>
5. Licensed appraisers' appraisals in Arizona must comply with USPAP.<sup>12</sup>
6. The most basic requirement for an appraisal is that it must be independently and impartially performed and set forth an unbiased opinion of value supported by analyses that comply with USPAP's requirements.<sup>13</sup>
7. Mr. Van Dyke did establish with the additional pages produced at the hearing that the appraisal report for the Wisteria Drive property was complete.
8. The Board has otherwise established that Mr. Van Dyke violated USPAP SR 1-1(b) and (c) and SR 2-1(a), (b), and (c) and Standards Ethic Rule – Conduct and Standards Ethics Rule –

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<sup>6</sup> See A.R.S. § 32-3601 *et seq.*

<sup>7</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>8</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>9</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

<sup>10</sup> A.R.S. § 32-3605(B)(1).

<sup>11</sup> A.R.S. § 32-3631(A)(2) and (6); *see also* A.A.C. R4-46-301 (concerning complaints and investigations) and R4-46-302 (concerning formal hearing procedures, investigations, and penalties).

<sup>12</sup> A.A.C. R4-46-401.

<sup>13</sup> A.R.S. § 32-3601(1) and (2).

Competency in his development and preparation of the appraisal report for the Wisteria Drive property in the manners described in Mr. Clark's report and testimony.

9. Although Mr. Van Dyke's difficult family situation may have compromised his independence and made his violations of USPAP more likely, because he is a licensed professional who is expected to be independent, his family situation cannot vitiate his violations.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board adopt the Order of the Administrative Law Judge with modifications to include the Board's standard probation language, to read as follows:

#### **ORDER OF PROBATION**

In issuing this order of discipline, the Board considers its obligations to fairly and consistently administer discipline, its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. Upon the effective date of this Order, Respondent's License as a Licensed Residential Appraiser shall be placed on probation for a period of twelve (12) months. During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.
2. Respondent shall successfully complete the following education within ninety (90) days of the effective date of the Board's Order: a minimum of fifteen (15) hours of coursework in report writing, which includes the successful completion of an exam and fifteen (15) hours of basic appraisal, to include the successful completion of an exam. The education required above may not be counted toward the continuing education requirements for the renewal of Respondent's certificate. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses.
3. During the term of probation, Respondent shall: (a) demonstrate resolution of the problems that resulted in this disciplinary action; and (b) otherwise comply with the terms of this Order.
4. During the period of probation, Respondent shall complete a minimum of twenty-four (24) appraisal reports or review appraisals under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's Mentor ("Mentor"). The Mentor shall be either an Arizona Certified Residential or Certified General Appraiser.
5. During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor. Each report shall be signed by the Mentor as a supervisory appraiser. In the event that Respondent's client will not accept the signature of the Mentor affixed to an assignment as a supervisory appraiser, the Mentor need not co-sign the report, but must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request. In order to invoke these provisions, the Respondent



- must submit proof to the Board with his monthly log showing that his client's policies prevent co-signature by the Mentor.
6. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Order. The Mentor may not have a business relationship with Respondent except for the Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor is subject to the Board's approval and the remaining terms of this Order. The Board's Executive Director may give temporary approval of the Mentor until the next regular meeting of the Board.
  7. Not more than 30 days after the effective date of this Order, Respondent shall submit to the Board the name and resume of an Arizona Certified Residential or Arizona Certified General Appraiser who is willing to serve as Respondent's Mentor together with a letter from the potential Mentor agreeing to serve as Respondent's Mentor. If requested by Board staff, Respondent shall continue to submit names, resumes, and letters agreeing to serve as Mentor until a Mentor is approved by the Board. Any Mentor must be approved in writing by the Board.
  8. Respondent shall bear all costs and expenses associated with the mentorship and incurred in attending the required courses.
  9. The Mentor shall submit monthly reports to the Board for each calendar month during Respondent's probationary period reflecting the quantity and quality of Respondent's work, including, but not limited to, improvement in Respondent's practice and resolution of those problems that prompted this action. The Mentor's report shall be filed monthly beginning the 15<sup>th</sup> day of the first month following the start of Respondent's probationary period and continuing each month thereafter until termination of the probationary period by the Board. Even if the Mentor reviews no appraisals during a given month, a report stating that no appraisals were reviewed or approved must be submitted. It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly. If the monthly reporting date falls on a Saturday, Sunday, or holiday, the report is due on the next business day. The monthly report may be filed by mail or facsimile.
  10. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by property address, appraisal type, valuation date, the Mentor's review date, the date the appraisal was issued, and the number of hours worked on each assignment. The report log shall be filed monthly beginning the 15<sup>th</sup> day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or holiday, the report log is due on the next business day. Even if Respondent performs no appraisals within a given month, he must still file an appraisal log with the Board showing that no appraisals were performed. The monthly log report may be filed by mail or facsimile.
  11. The Board reserves the right to audit any of Respondent's reports and conduct peer review, as deemed necessary, during the probationary period. The Board may, in its discretion, seek separate disciplinary action against the Respondent for any violation of the applicable statutes and rules discovered in an audit of the Respondent's appraisal reports provided to the Board under the terms of this Consent Agreement.

12. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 13, and (b) the Board terminates the probation and mentorship. Upon petition by the Respondent for termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.
13. At the end of twelve (12) months from the effective date of this Order, the Respondent must petition the Board for termination of his mentorship and probation. If the Board determines that Respondent has not complied with all the requirements of this Order, the Board, at its sole discretion, may institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial action.
14. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor shall he act as a mentor during the term of the probation. Respondent shall also not teach any course related to real estate appraisals during the term of the probation.
15. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice in performing all appraisals and all Board statutes and rules.
16. If, between the effective date of this Order and the termination of Respondent's probation by the Board, Respondent fails to renew his license while under this Order and subsequently applies for a license or certificate, the remaining terms of this Order, including probation and mentorship, shall be imposed if the application for license or certificate is granted.
17. Respondent understands that this Order, or any part thereof, may be considered in any future disciplinary action against him.
18. If Respondent fails to comply with the terms of this Order, the Board shall properly institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent understands that any violation of this Order is a violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any of the provisions of the Board's statutes or the rules of the Board for the administration and enforcement of its statutes.
19. Respondent understands that this Order does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other pending or future investigation, action or proceeding.
20. Respondent understands that this Order is a public record that may be publicly disseminated as a formal action of the Board.
21. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-mentioned matter to constitute to a Level III Violation.

**RIGHT TO PETITION FOR REHEARING OR REVIEW**

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective 35 days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the 12-month file review.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2516, Timothy R. Fortunato.

Respondent and complainant appeared. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. Michael Marquess moved that the Board accept the proposed Consent Agreement and Order finding Level III Violations and providing for probation, mentorship and education; and that the Board rescind its referral to formal hearing before the Office of Administrative Hearings (OAH). Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the 12-month file review.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2541, John T. Martell.

Respondent appeared and was represented by Michael H. Orcutt, Esq. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. Gabe Corral moved that the Board reject the proposed counteroffer. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the attorneys negotiate a proposed Consent Agreement and Order for Board approval. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the 12-month file review.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2542/2543/2544/2632, Rodney L. Martensen.

Respondent did not appear. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. Michael Marquess moved that the complaints be reopened based on Respondent's renewal of his Real Estate Appraiser License # 10079, and that the matters be referred to formal hearing before the Office of Administrative Hearings (OAH). Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the 12-month file reviews for 2542/2543/2544.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2569, Safa P. Sitto.

Respondent did not appear. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. Michael Marquess moved that the Board accept the proposed Consent Agreement and Order for Voluntary Surrender finding Level V Violations and providing for the voluntary surrender of Respondent's Certified Residential Real Estate Appraiser Certificate # 21363. Victor Hartsfield seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board rescind its referral to formal hearing before the Office of Administrative Hearings (OAH). Victor Hartsfield seconded the motion. The Board voted unanimously in favor of the motion.

Christopher Munns, Assistant Attorney General, Solicitor General's Office, left the meeting.

## **APPLICATION REVIEW**

### Review and Action Concerning Renewal Application of Thomas A. Rail, Licensed Real Estate Appraiser License #11733.

Applicant did not appear. Michael Marquess moved that the Board deny the renewal application of Thomas A. Rail, Licensed Real Estate Appraiser License #11733, pursuant to A.R.S. §§ 32-3620(A), 32-3611(D), 32-3631(A)(4), 32-3631(A)(5). Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

## **COMPLAINT REVIEW**

### Review and Action Concerning 2711, Thomas A. Rail.

Respondent did not appear. Cynthia Henry moved that the Board accept the investigative report. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that, based on the Board's denial of the Respondent's renewal application, the Board close the complaint to be reopened and considered in the event Respondent reapplies. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

## **APPRAISAL TESTING AND EDUCATION COMMITTEE REPORT**

Gabe Corral moved that the Board approve Loss Prevention (Seminar) for Real Estate Appraisers submitted by National Association of Independent Fee Appraisers for four hours. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board accept the Committee's recommendations (see attached). Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

## **COMPLAINT REVIEW**

### Review and Action Concerning 2676, Gabriel B. Corral.

Gabe Corral, Respondent, appeared and recused himself. Staff summary was read. Michael Marquess moved that the Board accept the investigative report. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that the Board find level I Violations and offer Respondent a nondisciplinary letter of concern citing the violations. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Gabe Corral left the meeting. A quorum remained.

### Informal Hearing Concerning 2439/2520/2523, William A. Buehl.

Respondent appeared prior to the meeting but did not remain for the informal hearing. Debbie Rudd moved that the Board find Level III Violations and offer Respondent a Consent Agreement and Order citing the violations and providing for a restricted practice, probation, mentorship and disciplinary education. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the files were under 12-month file review.

Informal Hearing Concerning 2481, Daniel W. Mahoney.

Respondent did not appear. Debbie Rudd moved that the Board find Level III Violations and offer Respondent a Consent Agreement and Order citing the violations and providing for a restricted practice, probation, and disciplinary education. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the file was under 12-month file review.

Review and Action Concerning 2750, Rodney L. Martensen.

Respondent did not appear. Debbie Rudd moved that the complaint be reopened based on Respondent's renewal of his Real Estate Appraiser License #10079. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Debbie Rudd moved that the matter be referred to formal hearing before the Office of Administrative Hearings (OAH). Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2444, Dawna G. Khoudepaz.

Respondent did not appear. Debbie Rudd moved that the Board open complaint 2833 for noncompliance and that the matter be referred to formal hearing before the Board. Victor Hartsfield seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2278, Safa P. Sitto.

Respondent did not appear. Michael Marquess moved that, based on the voluntary surrender of Respondent's Certified Residential Real Estate Appraiser Certificate # 21363, the complaint be closed to be reopened and considered in the event Respondent reappears. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2453, Jamie Topete.

Respondent did not appear. Debbie Rudd moved that the Board approve Jay B. Clark, Certified Residential Appraiser #20154, to act as Respondent's mentor under the 3/17/09 Findings of Fact, Conclusions of Law, and Order of Probation. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2624, Shemika L. Hill.

Respondent did not appear. Michael Marquess moved that Respondent be granted until May 1, 2009, to submit a mentor under the 3/6/09 Consent Agreement and Order; and if not received, that a complaint be opened for noncompliance. Cynthia Henry seconded the motion. The Board voted 4-1 in favor of the motion. Myra Jefferson voted no.

Review and Action Concerning 2667, Chad R. Talbert.

Respondent did not appear. Debbie Rudd moved that the matter be referred to formal hearing before the Office of Administrative Hearings (OAH). Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2669/2679, Jason M. Maze.

Respondent did not appear. Michael Marquess moved that the Board approve Jay B. Clark, Certified Residential Appraiser #20154, to act as Respondent's mentor under the 2/9/09 Consent Agreement and Order. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2724, Brisa L. Manis.

Respondent did not appear. Michael Marquess moved that the Board approve Bert R. Waterhouse, Certified Residential Appraiser # 21526, to act as Respondent's mentor under the 2/18/09 Consent Agreement and Order. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning Superior Court Case CV-06-4140 (03F-1782-BOA/03F-1784-BOA)/2492, Felicia M. Coplan.

Respondent did not appear. Jeanne Galvin updated the Board concerning the court proceedings concerning CV-06-4140 (03F-1782-BOA/03F-1784-BOA). The Board noted the 12-month file review concerning 2492.

Review and Action Concerning 2765/2811, Richard E. Lineberger.

Respondent did not appear. Staff summaries were read. Michael Marquess moved that the matters be referred to formal hearing before the Board. Cynthia Henry seconded the motion. The motion was withdrawn. Michael Marquess moved that the matters be tabled to allow Respondent to renew. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2774, Timothy G. Clark.

Respondent did not appear. Staff summary was read. Debbie Rudd moved that Respondent be issued a cease and desist letter with a copy to the Massachusetts Board of Registration of Real Estate Appraisers. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2776, Tune P. Redmond.

Respondent did not appear. Staff summary was read. Debbie Rudd moved that the Board find Level III Violations and offer Respondent a Consent Agreement and Order citing the violations and providing for probation, mentorship and disciplinary education. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2777, Edward A. Measel.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the Board find Level III Violations and offer Respondent a Consent Agreement and Order citing the violations and providing for probation, mentorship and disciplinary education. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2778, Gary F. Bartholomew.

Respondent did not appear. Staff summary was read. Debbie Rudd moved that the Board find Level II Violations and offer Respondent a nondisciplinary letter of remedial action citing the violations and providing for remedial education. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2781, Leland G. Gary.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the matter be referred to investigation. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2782/2783, Michael T. Asher.

Respondent did not appear. Staff summaries were read. Cynthia Henry moved that the Board accept the investigative reports. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Michael Marquess moved that Respondent be invited to an informal hearing. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2784, Jeffrey S. Kerr.

Respondent did not appear. Staff summary was read. Michael Marquess moved that Respondent be issued a cease and desist letter with a copy to the California Office of Real Estate Appraisers. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2790, Christina M. Plemons.

Respondent did not appear. Staff summary was read. Debbie Rudd moved that the Board find Level II Violations and offer Respondent a due diligence consent letter citing the violations and providing for disciplinary education. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2791, Michael S. Mason.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the matter be referred to formal hearing before the Board. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2792, Renee A. De Vries.

Respondent did not appear. Staff summary was read. Debbie Rudd moved that the Respondent be invited to an informal hearing. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2794, William P. Gowney.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the Board find no violations and dismiss the complaint. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2796, Kenneth L. Stirn.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the matter be referred to investigation. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2800, Vicky J. Love.

Respondent did not appear. Staff summary was read. Michael Marquess moved that the matter be referred to investigation. Debbie Rudd seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2487, Nathan G. Morris.

Respondent did not appear. The Board noted that a formal hearing had been scheduled before the Office of Administrative Hearings (OAH); and that the file was under 12-month file review.

Review and Action Concerning 2502, Clare A. Williamson-Redding.

Respondent did not appear. The Board noted that a formal hearing had been scheduled before the Office of Administrative Hearings (OAH); and that the file was under 12-month file review.

Review and Action Concerning 2503, Randall P. Jacobs.

The Board noted that the file was under 12-month file review. Myra Jefferson moved that the file be closed to be reopened and considered in the event Respondent renews. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2545/2546/2547/2548, Thomas M. Kittelmann.

Respondent did not appear. The Board noted that settlement negotiations were pending and that the files were under 12-month file review.

**BOARD CHAIRPERSON REPORT**

None.

Staff was instructed to contact the Board Chairperson to schedule a Rules and Regulations Committee meeting.

**EXECUTIVE DIRECTOR REPORT**

Debb Pearson reported on the status of the Assistant Attorney General's assignments; advised no complaint answer dates that had been extended by staff; and reported the following complaint statistics as of 3/31/09 for calendar years 2007, 2008, and 2009:



	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>	<u>2009</u>
Complaints received by Board	243	225	48		
Complaints heard by Board				852	124
<b><u>OF THOSE COMPLAINTS:</u></b>					
Complaints dismissed	91	67	1	77	10
Complaints referred to investigation	94	68	1	76	8
Complaints resolved with nondisciplinary letter of concern	16	16	0	16	2
Complaints resolved with nondisciplinary letter of remedial action	19	30	0	28	9
Complaints resolved with disciplinary letter of due diligence	13	8	0	13	1
Complaints resolved with probation	62	18	0	66	11
Complaints referred to informal hearing	83	19	0	55	8
Complaints referred to formal hearing	49	11	0	53	3
Complaints resolved with suspension	11	1	0	31	2
Complaints resolved with surrender	5	4	0	6	2
Complaints resolved with revocation	7	0	0	2	8
Complaints resolved with cease and desist letters	6	0	0	4	0
<b><u>Violation Levels:</u></b>					
I	21	19	0	20	2
II	31	35	0	40	9
III	64	18	0	55	10
IV	9	1	0	5	1
V	11	2	0	27	5
<b><u>Additional Information:</u></b>					
	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	
Jurisdiction Expired & Complaints Closed	20	12	11	4	
Denials of New Applications	7	7	5	1	
Denials of Renewal Applications	4	1	0	0	

reported on the 3/10/09 Arizona Mortgage Fraud Task Force Meeting; reported on the 3/19-3/21/09 Investigator Training sponsored by the Association of Appraiser Regulatory Officials and The Appraisal Foundation, in Scottsdale, Arizona; and reported on the 4/3/09 Appraisal Standards Board (ASB) Meeting and the 4/3/09 State Regulatory Advisory Group (SRAG) Meeting held in New Orleans, Louisiana. The balance of the report was tabled due to time constraints.

Staff was instructed to send a thank you note to by the Association of Appraiser Regulatory Officials and The Appraisal Foundation for the Investigator Training.

## **NEW BUSINESS**

### **Discussion and Approval of Payment of Invoice for Investigative Report Submitted by Thomas J. Inserra.**

Michael Marquess moved that the Board approve payment of the invoice submitted by Thomas J. Inserra at the discounted rate. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Discussion and Action Concerning 3/15/09 Findings Adopted by the State of Illinois Appraisal Licensing Board.

The matter was tabled due to time constraints.

Discussion and Action Concerning H.B. 152, Appraisal Management Company Regulation, Adopted by the Utah Legislature and H.B. 1694, Appraisal Management Company Registration, Adopted by the Arkansas Legislature.

The matter was tabled due to time constraints.

Discussion and Action Concerning Solicitation for a "Comp Check" from EAS Valuation.

The matter was tabled due to time constraints.

Discussion and Action Concerning the First 2009 AQB Exposure Draft of an Interpretation and a Guide Note applying to the Real Property Appraiser Qualification Criteria.

The matter was tabled due to time constraints.

Discussion and Action Concerning Legal Guidance for the Opening of Complaints to Comply with Board Statutes and Rules.

The matter was tabled due to time constraints.

**CONFIRMATION OF MEETING DATES, TIMES, LOCATIONS AND PURPOSES**

The upcoming Committee and Board meetings were confirmed as follows:

<b><u>May</u></b>		
20	Application Review Committee	2:00 p.m.
20	Testing and Education Committee	2:30 p.m.
21	Board	9:00 a.m.

**ADJOURNMENT**

The meeting was adjourned.

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Debra J. Rudd, Chairperson